



264182

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL DISTRICT  
DUPAGE COUNTY, ILLINOIS, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, ex rel. )  
LISA MADIGAN, ATTORNEY GENERAL OF )  
THE STATE OF ILLINOIS, and ex rel. JOSEPH )  
E. BIRKETT, STATE'S ATTORNEY FOR )  
DUPAGE COUNTY, )

Plaintiffs, )

v. )

PRECISION BRAND PRODUCTS, INC., a )  
Delaware corporation, SCOT, INC., an Illinois )  
corporation, WILLIAM HELWIG, individually, )  
PRINCIPAL MANUFACTURING CORP., an )  
Illinois corporation, ARROW GEAR COMPANY, )  
an Illinois corporation, and REXNORD, INC., a )  
Delaware corporation, )

Defendants. )

PRECISION BRAND PRODUCTS, INC., )

Third-Party Plaintiff, )

v. )

AMES SUPPLY CO., BISON GEAR AND )  
ENGINEERING CORP., DOWNERS GROVE )  
SANITARY DISTRICT, DYNAGEAR, INC., )  
FUSIBOND PIPING SYSTEMS, INC., )  
LINDY MANUFACTURING, INC., )  
MAGNETROL INTERNATIONAL, INC., THE )  
MOREY CORPORATION, RHI HOLDINGS, )  
INC., TRICON INDUSTRIES, WHITE LAKE )  
BUILDING CORPORATION, CHASE- )  
BELMONT PROPERTIES, AMERICAN )  
NATIONAL BANK AND TRUST COMPANY )  
OF CHICAGO (n/k/a JP MORGAN CHASE )  
BANK NA) AS TRUSTEE UNDER TRUST )  
NO. 30797, CITIZENS NATIONAL BANK )  
OF DOWNERS GROVE (n/k/a U.S. BANK )  
NATIONAL ASSOCIATION) AS TRUSTEE )

No. 03 CH 979

JURY TRIAL DEMANDED

UNDER TRUST NO. 2398, LASALLE BANK )  
NATIONAL ASSOCIATION AS SUCCESSOR )  
TRUSTEE UNDER TRUST AGREEMENT )  
DATED 10/14/80 AND KNOWN AS TRUST )  
NO. 2398, NOW KNOWN AS TRUST NO. )  
B7900239830, LOVEJOY, INC., AND )  
WISCONSIN AVENUE PROPERTY, L.L.C., )

Third-Party Defendants. )

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WISCONSIN AVENUE PROPERTY, LLC., )

Fourth- Party Plaintiff, )

v. )

2430 WISCONSIN COMPANY, an Illinois general )  
partnership, DANIEL STIEHR and DORIS D. )  
STIEHR, )

Fourth-Party Defendants. )

**FOURTH-PARTY DEFENDANTS' VERIFIED ANSWER  
TO WISCONSIN AVENUE PROPERTY, L.L.C.'S  
VERIFIED FOURTH-PARTY COMPLAINT**

Fourth-Party Defendants 2430 Wisconsin Company, Daniel Stiehr and Doris D.

Stiehr (hereinafter collectively referred to as "Defendants"), by their attorneys, answer the

Fourth-Party Complaint as follows:

**Parties**

1. WAP is an Illinois limited liability company which holds legal title to certain real estate commonly known as 2424 Wisconsin Avenue, Downers Grove, Illinois (the "2424 Property"). The 2424 Property is in an industrial park with the name Ellsworth Industrial Park (the "Ellsworth Industrial Park"). WAP previously acquired the 2424 Property from 2430 Wisconsin Company pursuant to the contract described below.

**ANSWER:** Defendants lack sufficient information to admit or deny these allegations and accordingly demand strict proof thereof. Defendants state that the named purchaser on the October 10, 1996 Contract for Sale of Commercial Real Estate is Roy

Acquisition Corporation. Defendants deny that they were ever notified that WAP was being nominated by Roy Acquisition Corporation to be the substitute purchaser under that contract. Defendants therefore demand strict proof of WAP's alleged standing to bring any claims under that contract.

2. 2430 Wisconsin Avenue Company is or was an Illinois general partnership, the general partners in which included Daniel Stiehr, Doris Stiehr, Robert Diebel and possibly other general partners. On information and belief, Robert Diebel is deceased.

**ANSWER:** Admitted.

3. 2430 Wisconsin Company was the sole beneficiary of an Illinois land trust known as Chicago Title and Trust Company, as Trustee under Trust No. 1069459 (the "Land Trust"), which held legal title to the 2424 Property and transferred the 2424 Property to WAP pursuant to the contract described below.

**ANSWER:** Defendants lack sufficient information to admit or deny these allegations and accordingly demand strict proof thereof. Defendants state that the named purchaser on the October 10, 1996 Contract for Sale of Commercial Real Estate is Roy Acquisition Corporation. Defendants deny that they were ever notified that WAP was being nominated by Roy Acquisition Corporation to be the substitute purchaser under that contract. Defendants therefore demand strict proof of WAP's alleged standing to bring any claims.

**Ownership and Operation of the 2424 Property Before Sale to WAP**

4. Upon information and belief, the Land Trust acquired the 2424 Property on or before January 1, 1978; and held legal title to the 2424 Property at all times thereafter until June 2, 1997. Upon information and belief, 2430 Wisconsin Company was the sole beneficiary of the Land Trust at all times during which the Land Trust held legal title to the 2424 Property.

**ANSWER:** Admitted.

5. Commencing on January 1, 1978, and continuing until June 2, 1997, the Land Trust (for the benefit of 2430 Wisconsin Company) leased the 2424 Property to Bison Gear & Engineering Corporation, an Illinois corporation ("Bison"). On information and belief, Bison occupied the 2424 Property continuously from January 1, 1978 until June 2, 1997 and used the 2424 Property for the manufacture of gears, shafts, and aluminum castings for gear and electric motors.

**ANSWER:** Defendants state that Bison Gear and Engineering Corporation ( a wholly owned subsidiary of Diebel Manufacturing Company) rented the 2424 Property from 1978 until 1987. Bison was acquired by BGE Acquisition (hereinafter "BGE") in 1987. BGE Acquisition then operated the company as Bison Gear and Engineering (hereinafter "New Bison"). All previous records were turned over to BGE at closing. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and accordingly demand strict proof thereof.

6. In connection with Bison's operations at the 2424 Property, Bison used hazardous substances including 1,1,1-trichloroethane ("1,1,1- TCA"). Bison stored the wastes from its hazardous substance usage in drums located in a drum storage area on the north side of the building on the 2424 Property.

**ANSWER:** Defendants admit that Bison used 1,1,1--TCA. Defendants deny that Bison stored hazardous waste in drums outside the building on the 2424 Property. This paragraph does not identify what, if any, other hazardous substances are being referred to in these allegations. Defendants deny any and all other allegations in this paragraph.

7. At various times during the period in which Bison occupied the 2424 Property (and during the period in which Daniel Stiehr was a general partner in 2430 Wisconsin Company), Daniel Stiehr was president, a director and (on information and belief) a shareholder of Bison. As such, Daniel Stiehr had personal knowledge of Bison's operations at the 2424 Property during substantial portions, if not all, of the time period in which Bison occupied the 2424 Property.

**ANSWER:** Defendants admit that Daniel Stiehr was General Manager of Bison Gear from 1980 to 1984. Defendants admit that Mr. Stiehr has personal knowledge of Bison's operations at the 2424 Property during substantial portions of the time period in which Bison occupied the 2424 Property. Defendants state that Bison was a wholly-owned subsidiary of Diebel Manufacturing Company. Defendants deny any remaining allegations in this paragraph.

8. At various times during the period in which Bison occupied the 2424 Property (and during the period in which Daniel Stiehr was a general partner in 2430 Wisconsin Company), Robert Diebel was secretary, a director and (on information and belief) a shareholder of Bison. As such, Robert Diebel had personal knowledge of Bison's operations at the 2424 Property during substantial portions, if not all, of the time period in which Bison occupied the 2424 Property.

**ANSWER:** Defendants admit the first sentence of this paragraph. Defendants state that Bison was a wholly-owned subsidiary of Diebel Manufacturing Company. Defendants lack sufficient information as to the personal knowledge of Robert Diebel to admit or deny these allegations, and accordingly demand strict proof thereof.

**Sale of the 2424 Property to WAP**

9. On October 10, 1996, Roy Acquisition Corp., as nominee for WAP, entered into a Contract for Sale of Commercial Real Estate (the "Contract") with 2430 Wisconsin Company, pursuant to which 2430 Wisconsin Company agreed to sell and transfer the 2424 Property to Roy Acquisition Corp. as nominee for WAP. Daniel Stiehr executed the Contract as managing partner in 2430 Wisconsin Company. A copy of the Contract is attached hereto as Exhibit A.

**ANSWER:** Admitted.

10. In Section 7.08 of the Contract, 2430 Wisconsin Company made the following representation and warranty:

In addition, [2430 Wisconsin Company] represents and warrants that the [2424 Is now and at all times through the date of Closing shall remain in compliance with the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Federal Water Pollution Control Act and all other federal, state and local laws relating to pollution or protection of the environment, including, without limitation, laws relating to emissions, discharges, releases or threatened releases of industrial, toxic or hazardous substances or wastes or other pollutants, contaminants, petroleum products or chemicals (collectively, "Hazardous Substances") into the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances (the "Environmental Laws").

[2430 Wisconsin Company] further represents and warrants that the [2424 Property] is not contaminated with any Hazardous Substances and that. . . (ii) there has been no "release" as deemed in 42 U.S.C. 9601(22) or

of [2430 Wisconsin Company], threat of a "release" of any Hazardous Substance on, from or under the [2424 Property];

[2430 Wisconsin Company] further represents and warrants that [2430 Wisconsin Company] has not received any notice that [2430 Wisconsin Company] has any potential liability with respect to the cleanup of any site at which Hazardous Substances have been generated, treated, stored, discharged, emitted or disposed of and there are no past or present or future events, conditions or circumstances which may interfere with or prevent compliance or continued compliance by [2430 Wisconsin Company] in accordance with the Environmental Laws or with any order, decree, judgment, injunction, notice or demand issued, entered, promulgated or approved under the Environmental Laws or which may give rise to any common law or other legal liability, including, without limitation, liability under any Environmental Laws or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release in the environments (sic) Hazardous Substances by [2430 Wisconsin Company] or as a result of any action or omission of [2430 Wisconsin Company].

**ANSWER:** Defendants admit that this paragraph correctly quotes from portions of the Contract. Defendants state that the Contract itself is the best evidence of the parties' agreement, and rely on the Contract as a whole.

11. Pursuant to Section 11.04 of the Contract, 2430 Wisconsin Company reaffirmed all of its representations and warranties (including those set forth in Section 7.08 of the Contract as set forth above), as of the date of closing under the Contract.

**ANSWER:** Defendants state that the Contract itself is the best evidence of the parties' agreement, and rely on the Contract as a whole.

12. Pursuant to Section 16.03 of the Contract, 2430 Wisconsin Company agreed to indemnify and defend WAP from costs, claims and expenses, including attorneys' fees, arising out of any breach by 2430 Wisconsin Company of the Contract.

**ANSWER:** Defendants state that the Contract itself is the best evidence of the parties' agreement, and rely on the Contract as a whole. Defendants further state that the sole subject matter of Section 16 is Broker Commissions, and that the indemnity in Section 16.03 is accordingly limited to breaches of the provisions of that specific section and not of the Contract as a whole. Even though no response is required, Defendants accordingly deny the legal conclusion asserted in this paragraph.

13. On May 29, 1997, Ellen Diebel, acting under power of attorney, and Doris Stiehr executed a Resolution of 2430 Wisconsin Company authorizing the sale and transfer of the 2424 Property pursuant to the Contract and including ratification of all actions theretofore taken by Daniel Stiehr on behalf of 2430 Wisconsin Company pursuant to the Contract. On information and belief, Ellen Diebel executed such Resolution as attorney in fact for Robert Diebel, who was then a general partner in 2430 Wisconsin Company.

**ANSWER:** Admitted.

14. All obligations of 2430 Wisconsin Company, a general partnership, are the personal, joint and several obligations of all general partners in 2430 Wisconsin Company.

**ANSWER:** This paragraph asserts a legal conclusion to which no response is required. To the extent that this paragraph alleges any facts, Defendants deny them. Defendants further deny they have any liability to the Fourth-Party Plaintiffs or any other party in this case.

15. The closing of the purchase and sale of the 2424 Property pursuant to the Contract occurred on June 2, 1997, at which time the deed from the Land Trust to WAP was recorded with the DuPage County Recorder of Deeds, and WAP paid the purchase price to 2430 Wisconsin Company pursuant to the Contract.

**ANSWER:** Defendants lack sufficient information to admit or deny whether WAP (and not Roy Acquisition Corporation) paid the purchase price and/or was named as the Purchaser with the DuPage County Recorder of Deeds, and accordingly demand strict proof thereof. Defendants admit that the closing of the Contract occurred on June 2, 1997.

**Special Notice Letter From USEPA:  
Hazardous Substances at the 2424 Property**

16. In early January 2005, the United States Environmental Protection Agency ("USEPA") sent a Special Notice Letter dated December 28, 2004 (the "Special Notice Letter") to WAP and to several other parties advising WAP and such other parties that they were potentially responsible parties ("PRP") under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA"), with respect to Ellsworth Industrial Park based on alleged releases of hazardous substances at Ellsworth Industrial Park. Specifically, USEPA stated in the Special Notice Letter that USEPA had reason to believe that WAP was an owner/operator of a portion of the Ellsworth Industrial Park or a former owner/operator of the Ellsworth Industrial Park at the time of disposal of hazardous substances at the Ellsworth Industrial Park. A copy of the Special Notice Letter is attached hereto as Exhibit.B. WAP does not admit or concede that it is a PRP with respect to the 2424 Property or Ellsworth Industrial Park or that it is an owner or operator of the 2424 Property or

Ellsworth Industrial Park (or any portion thereof) for purposes of CERCLA or any other environmental laws or regulations.

**ANSWER:** Defendants lack sufficient information concerning the allegations in this paragraph to admit or deny them, and accordingly demand strict proof thereof.

17. Further pursuant to the Special Notice Letter, USEPA notified WAP that WAP was potentially responsible for the costs of certain environmental response actions taken by USEPA with respect to the Ellsworth Industrial Park, including the costs of performance of a remedial investigation/feasibility study ("RIFS") with respect to the Ellsworth Industrial Park pursuant to CERCLA. WAP does not admit or concede that it is responsible or liable for any of the matters stated or alleged by USEPA in the Special Notice Letter.

**ANSWER:** Defendants lack sufficient information concerning the allegations in this paragraph to admit or deny them, and accordingly demand strict proof thereof.

18. Bison was one of the other parties who received the Special Notice Letter from USEPA, based in part on its previous operations at the 2424 Property and in part on its previous operations at another site in the Ellsworth Industrial Park.

**ANSWER:** Defendants lack sufficient information concerning the allegations in this paragraph to admit or deny them, and accordingly demand strict proof thereof.

19. USEPA subsequently provided WAP a copy of a Data Evaluation Summary Report (Revision 1) dated August 1, 2005 (the "Weston Report") prepared by Weston Solutions, Inc. ("Weston") with respect to the Ellsworth Industrial Park. The Weston Report indicated that USEPA had performed subsurface investigation of the 2424 Property and detected 1,1,1- TCA and other chlorinated solvents in soil and groundwater in some of the subsurface testing locations at the 2424 Property.

**ANSWER:** Defendants lack sufficient information concerning the allegations in this paragraph to admit or deny them, and accordingly demand strict proof thereof.

20. The Weston Report contains the following background information concerning the 2424 Property:

"The [2424 Property] is currently occupied by Flowserve which has been present there for over 4 years. The [2424 Property] was previously occupied by [Bison], a manufacturer of gears, shafts, and aluminum castings used for gear and electric motors. The response to the U.S. EPA 104(e) indicates [Bison] leased the [2424 Property] from 1976 to 1997. The company [Bison] used 1,1,1-TCA (in waste petroleum naphtha) to clean gears and for a cutting process in a closed loop system. In 1986, approximately 2,200 gallons of waste petroleum naphtha was



generated. Solvents were stored in drums. Cutting oil was drained from machinery once or twice a year and removed by Beaver Oil. Waste naphtha was disposed of by Safety Kleen. The company [Bison] indicated they stopped using solvents in the late 1980s or early 1990s. A parts washing machine was purchased in 1986 to reduce the amount of waste petroleum naphtha generated. An [Illinois Environmental Protection Agency] inspection in 1991 noted petroleum stained soil at the property adjacent to a drum storage area. Contaminated soil was removed in May 1991 under [Illinois Environmental Protection Agency] oversight. A June 1991 site inspection by the DuPage County Department of Environmental Concerns found the [2424 Property] to be in compliance with applicable environmental regulations.”

**ANSWER:** Defendants do not have any knowledge concerning the contents of the Weston Report, nor have they received a copy of the referenced U.S. EPA 104(e) response from New Bison. Defendants lack any information concerning the authors’ basis for the quoted statements from those documents. Defendants therefore lack sufficient information at this time to admit or deny the allegations in this paragraph, and accordingly demand strict proof thereof.

21. After WAP’ s receipt of the Special Notice Letter, WAP obtained from Bison copies of documents that Bison had previously furnished to USEPA pursuant to Section 104( e) of CERCLA. Those documents included an Open Dump Inspection Report dated April 19, 1991 prepared by the Illinois Environmental Protection Agency (“IEPA”) which indicated, among other things, that IEPA observed (i) drums stored north of the building on the 2424 Property, (ii) waste oil storage tanks on the north side of such building, (iii) a sump manhole filled with oil/liquid on the north side of such building and (iv) oil or fuel saturated soils on the north side of such building. A copy of such Open Dump Inspection Report is attached hereto as Exhibit C.

**ANSWER:** Defendants lack sufficient information at this time about the factual basis, if any, for the referenced Open Dump Inspection Report to admit or deny the allegations in this paragraph, and accordingly demand strict proof thereof.

22. Subsequent to the Open Dump Inspection Report, IEPA issued an Administrative Warning Notice dated April 22, 1991 to Bison requiring Bison, among other things, to cease all open dumping at the 2424 Property and remove all wastes to a permitted landfill. A copy of such Administrative Warning Notice is attached hereto as Exhibit D.

**ANSWER:** Defendants lack sufficient information at this time about the factual basis, if any, for the referenced Administrative Warning Notice to admit or deny the allegations in this paragraph, and accordingly demand strict proof thereof.

23. Bison thereupon conducted cleanup actions at the 2424 Property including removal of certain quantities of contaminated soils to a depth of approximately four feet below ground surface from the area north of the building on the 2424 Property. Bison engaged Testing Service Corporation ("TSC") for such work, and TSC described such work in its letter dated June 7, 1991 to Bison, a copy of which is attached hereto as Exhibit E. Such environmental cleanup work performed by Bison is referred to herein as the "1991 Cleanup Action."

**ANSWER:** Defendants admit that New Bison performed certain site clean-up work in 1991, but lack sufficient information at this time about the factual basis for the referenced TSC letter to admit or deny its contents, or of any other allegation in this paragraph, and accordingly demand strict proof thereof.

24. USEPA's subsurface testing at the 2424 Property as reflected in the Weston Report identified hazardous substance concentrations in excess of USEPA's screening criteria at depths greater than four feet below ground surface that had been remediated pursuant to the 1991 Cleanup Action.

**ANSWER:** Defendants lack sufficient information about the referenced USEPA's subsurface testing to admit or deny the alleged findings of that work. Defendants further deny the implicit and unsupported allegation in this paragraph that any subsurface contamination identified by U.S. EPA was present at the site in 1991.

25. If any hazardous substances are at the 2424 Property as described in the Weston Report, those hazardous substances were present at the 2424 Property at the time of execution of the Contract and at the time of the transfer of the 2424 Property to WAP pursuant to the Contract.

**ANSWER:** Denied.

26. Daniel Stiehr was both the managing partner of 2430 Wisconsin Company and president, director and (on information and belief) shareholder of Bison. Robert Diebel was both a general partner of 2430 Wisconsin Company and secretary, director and (on information and belief) shareholder of Bison. Upon information and belief, Daniel Stiehr and Robert Diebel had knowledge, before the execution of the Contract, of the 1991 Cleanup Action. Such knowledge of Daniel Stiehr and Robert Diebel is imputed to 2430 Wisconsin Company, a

general partnership in which Daniel Stiehr was the managing general partner, and to all other general partners in 2430 Wisconsin Company.

**ANSWER:** Defendants deny that Daniel Stiehr was a shareholder of Bison. Bison was a wholly-owned subsidiary of Diebel Manufacturing Company. Defendants admit the remainder of the allegations in the first two sentences of this paragraph. Defendant Daniel Stiehr admits that he had general knowledge that the 1991 Clean-up Action had taken place. Defendants lack sufficient information to admit or deny the allegations in this paragraph concerning Robert Diebel's knowledge. The last sentence of this paragraph is a legal conclusion to which no response is required. To the extent that any factual allegations are made in the last sentence, Defendants deny them. Defendants further deny that they have any liability to the Fourth-Party Plaintiffs, or to any other party in this case.

27. Notwithstanding the knowledge of Daniel Stiehr, Robert Diebel and 2430 Wisconsin Company of the 1991 Cleanup Action, 2430 Wisconsin Company and its general partners did not disclose the 1991 Cleanup Action to WAP or its nominee in the Contract or otherwise before WAP entered into the Contract or acquired the 2424 Property pursuant to the Contract.

**ANSWER:** Defendants lack sufficient information at this time to admit or deny whether the 1991 Clean-up Action was disclosed to the Purchaser and/or the Purchaser's environmental consultant prior to the closing of the sale, and accordingly demand strict proof of all of the factual allegations in this paragraph. Defendants further deny that they intended to conceal information from the Purchaser or its representatives and consultants. Defendants further state that the 1991 Clean-up Action was a matter of public record and should have been readily available to Purchaser's environmental consultant as a part of Purchaser's Phase I due diligence investigation, which was completed to the Purchaser's satisfaction prior to closing.

28. Upon information and belief, 2430 Wisconsin Company, Daniel Stiehr and Robert Diebel intentionally omitted to disclose the 1991 Cleanup Action to WAP or its nominee during the course of the parties' pre-contract negotiations, with the intention that WAP

would rely upon such omission as part of its pre-contract negotiations and ultimate decision to acquire the 2424 Property.

**ANSWER:** Denied.

29. At all times relevant to the parties' pre-contract negotiations, WAP did in fact rely upon the omission of 2430 Wisconsin Company to disclose the 1991 Cleanup Action in concluding its negotiations and acquiring the 2424 Property. WAP had no knowledge of the 1991 Cleanup Action until WAP received documents from Bison following WAP's receipt of the Special Notice Letter in 2005.

**ANSWER:** Denied.

30. WAP has, pursuant to letters dated March 4, 2005 and April 26, 2005, notified Daniel Stiehr and Doris Stiehr (as general partners in 2430 Wisconsin Company) of the Special Notice Letter and has requested that 2430 Wisconsin Company and its general partners including Daniel Stiehr and Doris Stiehr (i) take responsibility for responding to claims by USEPA and any other parties arising from the environmental conditions at the 2424 Property and (ii) indemnify and defend WAP from all costs, expenses and liabilities arising therefrom. Daniel Stiehr and Doris Stiehr have failed to provide any response to such letters from WAP.

**ANSWER:** Defendants admit that WAP sent letters dated March 4, 2005 and April 26, 2005. Defendants deny the allegations made in those letters, and deny they have any liability to the Fourth-Party Plaintiffs or to any other party in this case.

### **The State of Illinois Proceeding**

31. In 2003 the State of Illinois (the "State") commenced a proceeding in 2003 against Precision Brand Products, Inc. and other parties, which proceeding is pending in Circuit Court of DuPage County, Illinois as *State of Illinois v. Precision Brand Products, Inc. et al.*, Case No. 03 CH 979 (the "State of Illinois Proceeding"). Pursuant to the State of Illinois Proceeding, the State seeks, among other things, recovery from the defendants of environmental response costs incurred by the State in connection with the environmental conditions in and in the vicinity of Ellsworth Industrial Park.

**ANSWER:** Defendants lack sufficient information to admit or deny these allegations, and accordingly demand strict proof thereof.

32. Some of the defendants in the State of Illinois Proceeding have filed third party complaints in the State of Illinois Proceeding against WAP and other third party defendants for contribution, under the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/2 *et seq.* (the "Contribution Act"), to any liability they have to the State.

**ANSWER:** Defendants lack sufficient information to admit or deny these allegations, and accordingly demand strict proof thereof.

33. The third party defendants in the State of Illinois Proceeding have filed, or are likely to file, counterclaims and cross-claims against the other third party defendants in the State of Illinois Proceeding, including WAP.

**ANSWER:** Defendants lack sufficient information to admit or deny these allegations, and accordingly demand strict proof thereof.

**COUNT I**  
**(Breach of Representations and Warranties in Contract)**

34. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 34 of this Count I.

**ANSWER:** Defendants repeat and reallege their responses to paragraphs 1 through 33.

35. If the 1991 Cleanup Action was required by IEPA because of hazardous substance releases on the 2424 Property, then those releases occurred before the execution of the Contract on October 10, 1996, and in such case the failure of 2430 Wisconsin Company to have disclosed such releases in the Contract constituted a material breach of the representations and warranties by 2430 Wisconsin Company in Sections 7.08 and 11.04 of the Contract.

**ANSWER:** Defendants admit that any contamination removed from the 2424 Property during the 1991 Clean-up Action was caused by releases occurring before 1996. Defendants deny that any actionable 1,1,1, --TCA contamination remained on the 2424 Property after the 1991 Clean-up Action. Defendants deny there have been any material breaches of the representations and warranties of the Seller in the Contract. Defendants deny any further allegations in this paragraph.

36. If the hazardous substances identified in the Weston Report (or in any subsequent investigation by USEPA or any other party) were released on the 2424 Property, such releases occurred before WAP acquired the 2424 Property from 2430 Wisconsin Company pursuant to the Contract, and in such case the failure of 2430 Wisconsin Company to have disclosed such releases in the Contract constituted a material breach of the representations and warranties by 2430 Wisconsin Company in Sections 7.08 and 11.04 of the Contract.

**ANSWER:** Denied.

37. 2430 Wisconsin Company and its general partners had knowledge of the 1991 Cleanup Action and the conditions related thereto before the execution of the Contract. As such, the breach by 2430 Wisconsin Company of its representations and warranties in Sections 7.08 and 11.04 of the Contract was willful and intentional.

**ANSWER:** Defendant Daniel Stiehr admits that he had general knowledge that the 1991 Clean-up Action had occurred. Defendants deny all other allegations in this paragraph.

38. If any such hazardous substance releases occurred on the 2424 Property, then as a direct and proximate result of the above-described breaches, WAP has suffered, and continues to suffer, material monetary damages.

**ANSWER:** Denied.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays this Court enter judgment in favor of the fourth-party plaintiff and against the fourth-party defendants, 2430 WISCONSIN COMPANY, DANIEL STIEHR and DORIS STIEHR, and each of them, jointly and severally, as follows:

- A. For compensatory damages suffered by WAP as a result of the fourth-party defendants' breach of the representations and warranties in Sections 7.08 and 11.04 of the Contract;
- B. For punitive damages as a result of fourth-party defendants' willful and intentional breach of their representations and warranties in Sections 7.08 and 11.04 of the Contract;
- C. Awarding WAP its attorneys' fees and costs; and
- D. For such other and additional relief as the Court deems just and proper.

**ANSWER:** Defendants deny they have any liability to Wisconsin Avenue Property, LLC or to any other party in this case. Defendants further deny that Wisconsin Avenue Property, LLC is entitled to any of the requested relief.

**COUNT II**  
**(Fraudulent Inducement)**

39. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 39 of this Count II.

**ANSWER:** Defendants reallege their responses to paragraphs 1 through 33.

40. As alleged with greater particularity above, 2430 Wisconsin Company had knowledge, before execution of the Contract, of the 1991 Cleanup Action.

**ANSWER:** Defendant Daniel Stiehr admits that he had general knowledge before execution of the Contract that the 1991 Clean-up Action had occurred.

41. The omission of 2430 Wisconsin Company to have disclosed the 1991 Cleanup Action to WAP or its nominee in the Contract or otherwise before the consummation of the purchase and sale transaction provided by the Contract was a material omission that was calculated to fraudulently induce WAP to enter into the Contract and acquire the 2424 Property.

**ANSWER:** Denied.

42. As a direct and proximate result of such fraudulent inducement, WAP acquired the 2424 Property, without knowledge of the 1991 Cleanup Action.

**ANSWER:** Denied.

43. As a direct and proximate result of such fraudulent inducement, WAP has suffered, and continues to suffer, material monetary damages.

**ANSWER:** Denied.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays this Court enter judgment in favor of the fourth-party plaintiff and against the fourth-party defendants, the 2430 WISCONSIN COMPANY, DANIEL STIEHR and DORIS STIEHR, and each of them, jointly and severally, as follows:

- A. For compensatory damages suffered by W AP as a result of the fourth-party defendants' fraudulent inducement of W AP with respect to the Contract and consummation of the transactions contemplated thereby;
- B. For punitive damages as a result of fourth-party defendants' fraudulent inducement of WAP with respect to the Contract and the consummation of the transactions contemplated thereby;
- C. Awarding WAP its attorneys' fees and costs; and

D. For such other and additional relief as the Court deems just and proper.

**ANSWER:** Defendants deny they have any liability to Wisconsin Avenue Property, LLC or to any other party in this case. Defendants further deny that Wisconsin Avenue Property, LLC is entitled to any of the requested relief.

**COUNT III  
(Indemnity)**

44. WAF realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 44 of this Count III.

**ANSWER:** Defendants reallege their responses to paragraphs 1 through 33.

45. Pursuant to Section 16.03 of the Contract, 2430 Wisconsin Company agreed to indemnify and defend WAP from costs, claims and expenses, including attorneys' fees, arising out of any breach by 2430 Wisconsin Company of its obligations under the Contract.

**ANSWER:** Defendants state that the Contract itself is the best evidence of the parties' agreement, and rely on the Contract as a whole. Defendants further state that the sole subject matter of Section 16 is Broker Commissions, and that the indemnity in Section 16.03 is accordingly limited to breaches of the provisions of that specific section and not of the Contract as a whole. Defendants deny any other factual allegations in this paragraph.

46. Any breach of 2430 Wisconsin Company's representations and warranties in Sections 7.08 and 11.04 of the Contract constituted a breach of the Contract.

**ANSWER:** This paragraph consists of a legal conclusion to which no response is required. To the extent that any factual allegation is made in this paragraph, Defendants deny same. Defendants deny any liability for breach of the Contract.

47. As alleged with greater particularity above, the breach by 2430 Wisconsin Company of its representations and warranties in Sections 7.08 and 11.04 of the Contract was willful and intentional.

**ANSWER:** Denied.



48. 2430 Wisconsin Company has failed and refused to provide such indemnification and defense to WAP notwithstanding WAP's demand for such defense and indemnification.

**ANSWER:** Defendants deny that WAP is entitled to be indemnified or to be provided a defense by the Defendants.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays this Court enter judgment in favor of the fourth-party plaintiff and against the fourth-party defendants, 2430 WISCONSIN COMPANY, DANIEL STIEHR and DORIS STIEHR, and each of them, jointly and severally, as follows:

- A. Ordering and requiring the fourth-party defendants to indemnify and defend WAP from all liability arising from the breach by 2430 Wisconsin Company of its obligations under the Contract.
- B. For compensatory damages suffered by WAP as a result of the fourth-party defendants' breach of their obligations to indemnify and defend WAP from all liability arising from the breach by 2430 Wisconsin Company of its obligations under the Contract;
- C. For punitive damages as a result of fourth-party defendants' willful and intentional breach of their obligations to indemnify and defend WAP from all liability arising from the breach by 2430 Wisconsin Company of its obligations under the Contract;
- D. Awarding WAP its attorneys' fees and costs; and
- E. For such other and additional relief as the Court deems just and proper.

**ANSWER:** Defendants deny they have any liability to Wisconsin Avenue Property, LLC and further deny that Wisconsin Avenue Property, LLC is entitled to any relief.

**COUNT IV**  
**(Illinois Joint Tortfeasor Contribution Act)**

49. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 49 of this Count IV.

**ANSWER:** Defendants reallege their responses to paragraphs 1 through 33.

50. If releases of hazardous substances occurred on the 2424 Property during the time period in which the Land Trust held title to the 2424 Property (and in which 2430 Wisconsin Company was the beneficiary of the Land Trust), 2430 Wisconsin Company had a duty to the State not to allow hazardous substances to be released on 2424 Property. 2430

Wisconsin Company also had a duty to promptly respond to any releases of hazardous substances at the 2424 Property.

**ANSWER:** Defendants object to the vague and hypothetical nature of this allegation. Subject to that objection, Defendants deny that they breached any legal duty or legal obligation to prevent the release of hazardous substances on the 2424 Property. Defendants deny any other factual allegation in this paragraph.

51. Any contamination at the 2424 Property that was caused by Bison's operations constitutes a breach of 2430 Wisconsin Company's duty and its negligent acts and omissions in connection with its ownership of the 2424 Property.

**ANSWER:** Denied.

52. If WAP incurs any liability to any other parties as a result of any hazardous substances at or originating from the 2424 Property, then such liability is the direct and proximate result of 2430 Wisconsin Company's breach of its duty.

**ANSWER:** Denied.

53. If it is found that any of the third-party plaintiffs, counterclaimants or cross-claimants in the State of Illinois Proceeding are entitled to recover any contribution from WAP pursuant to the State of Illinois Proceeding, then WAP is entitled to contribution from 2430 Wisconsin Company and its general partners including Daniel Stiehr and Doris Stiehr in an amount equivalent to their proportionate share of liability pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/1 *et seq.*

**ANSWER:** Denied.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays that, in the event that it is found to be liable to any of the third party plaintiffs, counter-claimants or cross-claimants in the State of Illinois Proceeding, then WAP is entitled to a monetary contribution from 2430 Wisconsin Company and its general partners including David Stiehr and Doris Stiehr in an amount equal to their pro rata share of liability, as it may hereafter be calculated.

**ANSWER:** Defendants deny they have any liability to Wisconsin Avenue Property, LLC or to any other party in this case. Defendants further deny that Wisconsin Avenue Property, LLC is entitled to any of the requested relief.

### **DEFENSES**

1. Fourth-Party Plaintiff's Complaint fails to state a claim on which relief can be granted against the Defendants.

2. Upon information and belief, if the Fourth-Party Plaintiffs have any actual liability, the proximate cause is limited to releases occurring after June 2, 1997.

3. Some or all of the claims asserted in Fourth-Party Plaintiff's Complaint appear to be hypothetical in nature and may not present an actual case or controversy.

#### **AFFIRMATIVE DEFENSES**

1. Fourth-Party Plaintiff's Complaint is barred by the Statute of Limitations.

2. Fourth-Party Plaintiff's Complaint is barred by the doctrines of laches and estoppel.

3. Fourth-Party Plaintiff's Complaint is barred by the doctrine of unclean hands.

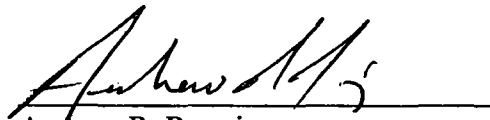
4. Fourth-Party Plaintiff's claims are subject to the defense of contributory negligence.

5. Fourth-Party Plaintiff has failed to mitigate its damages.

#### **JURY DEMAND**

Defendants demand trial by jury on all counts of this Complaint.

Respectfully submitted,



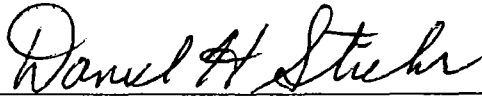
Andrew R. Running  
Kirkland & Ellis LLP  
200 East Randolph, 61<sup>st</sup> Floor  
Chicago, IL 60601

DATED: March 7, 2006

Counsel for Defendants, 2430 Wisconsin  
Company, Daniel Stiehr and Doris Stiehr

**VERIFICATION**

UNDER PENALTIES OF PERJURY provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned DANIEL H. STIEHR certifies that he has read the above and foregoing ANSWER TO COMPLAINT and that the responses contained therein are true and correct.

  
\_\_\_\_\_  
DANIEL H. STIEHR

Dated: March 6, 2006

**CERTIFICATE OF SERVICE**

I, Andrew R. Running, hereby certify that on March 7, 2006, I caused a true and correct copy of the foregoing FOURTH-PARTY DEFENDANTS' ANSWER TO WISCONSIN AVENUE PROPERTY, L.L.C.'S VERIFIED FOURTH-PARTY COMPLAINT to be served by first-class U.S. Mail, upon the following counsel of record:

Timothy Ramsey  
Jeffrey H. Bunn  
Weinberg Richmond LLP  
333 W. Wacker Drive  
Suite 1800  
Chicago, Illinois 60606

  
\_\_\_\_\_  
ANDREW R. RUNNING